

**2001 DRAFTING REQUEST**

**Bill**

Received: 10/25/2000

Received By: rryan

Wanted: Soon

Identical to LRB:

For: Administration-Budget 7-0370

By/Representing: Statz

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Alt. Drafters:

Subject: **Criminal Law - crimes agnst kids**  
**Criminal Law - miscellaneous**

Extra Copies: **MGD**

**Pre Topic:**

DOA:.....Statz -

**Topic:**

Crimes related to computers, obscenity, nudity, and pornography

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	rryan 01/18/2001	jdyer 01/22/2001	pgreensl 01/22/2001	_____	lrb_docadmin 01/23/2001		
/1	rryan 01/31/2001	jdyer 01/31/2001	jfrantze 01/31/2001	_____	lrb_docadmin 01/31/2001		
/2	rryan 02/01/2001	jdyer 02/01/2001	jfrantze 02/02/2001	_____	lrb_docadmin 02/02/2001		

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/1	rryan 01/31/2001	jdyer 01/31/2001	jfrantze 01/31/2001	_____	lrb_docadmin 01/31/2001		

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 1/2 2/1 jld jld 2/2 2/2 K/M 2/2 <END>

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FE Sent For:

1/31 jcd  
 1/31 Jb  
 1/31 J/K  
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1?	rryan	1/1 1/22 jld	1/28 pg	1/28 pg	1/28 pg		

FE Sent For:

<END>

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
SECRETARY



Division of Executive Budget and Finance  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1736  
Fax (608) 267-0372  
TTY (608) 267-9629

**Date:** October 23, 2000

**To:** Steve Miller  
Legislative Reference Bureau

**From:** Andrew J. Statz *AS*  
DOA - State Budget Office

**Subject:** Budget drafting request to create an Internet crimes chapter

I am requesting statutory language be drafted for inclusion with the 2001-03 biennial budget bill.

The draft will create a new chapter in the statutes addressing crimes related to and facilitated by the Internet and other modern communications technologies. To avoid redrafting, language should also address any future communications technology.

In part, this request is a reaction to recent Supreme Court rulings regarding the constitutionality of existing prohibitions on child enticement, exposing a child to harmful materials, and voyeurism. One goal of this request is to resolve constitutional inconsistencies such as burden of proof and the issue of protected speech. Another is addressing loopholes in existing laws that are enabled by language that is too broad.

Sections should include, but are not limited to, child enticement, stalking, harassment, child pornography, viruses, identity theft, drug trafficking, fraud, libel, video voyeurism, copyright infringement, hacking, cyber-terrorism, and credit card theft.

One element of this task may be defining these crimes and updating existing offenses to include reference to new electronic means of communication and future technologies. An effort should be made to feasibly eliminate the reliance on face-to-face contact to establish a reasonable assumption that a defendant knew or should have known the recipient's age.

I have forwarded information on the actions of other states to Mike Dsida. Naturally, additional guidance can be gleaned from recent Supreme Court decisions.

If you have any questions regarding this request, please give me a call at 267-0370. Thank you.

Defs (Definitions)  
Investigation  
Prosecution

Desired items for chapt.

DSS has grant for child enticement  
by internet

create a sub-dw / taskforce to  
investigate internet crimes

does a person possess porn if views on  
a webpage - Andrew wants to  
cover that

Voyeurism - means fix to  
Stevenson  
connection is that people  
put the video on internet  
& ~~gen. dist.~~  
prohibit the taping & any  
kind of distribution

cyber terrorism  
& any form of terrorism } expand  
to cover  
private  
business/orgs  
civil disobedience

don't ~~need~~ ~~to~~ include unauthor  
theft of sound - Napster issue

Andrew  
will  
need  
detail

maybe will want to address interstate  
agreements  
extradition agreements  
over investigation  
- require to  
have with  
neighboring states

enhance for using encryption  
technology

investigating prosecuting will likely  
be at state level. for all  
of it.

leave ~~penalties~~ penalties for  
Andrew to fill in

Andrew  
12/15/00

Do include child porn  
morphing material in the draft

§ Andrew  
enhancer for encryption

0795

→ - hiding identity  
- for ex solicitor teens for  
sexual activity

concealed identity  
doesn't mean using a  
pseudonym

forget about it unless Andrew  
gives

11/20

Andrew:

likes "tangible medium" language  
in S. Dakota stats.

Require labelling of sexually  
explicit emails ads!

just email - not web pages

see PA for ex

---

11/27

prohibit <sup>untabeled</sup> obscene & sexual conduct  
emails - as broad as  
possible

## Internet Crime: State Legislation

**Arizona:** Basic addition of computer language to statutes

**Colorado:**

- HB1107: Update harassment language to include new technology; enticement of a child **does not** explicitly state computer use
- HB1111: Additional penalties for forging an identity document, which is more prevalent with templates of state driver's license on the Internet

**Delaware:** Modernization of child pornography laws

**Florida:** Creates penalties for transmitting lewd and lascivious exhibitions over the Internet; burden rests on defendant for proving age (see ln.10-18 on p.3); restriction on computer technology for sexual offenders

**Georgia:** Restrictions on use of computer or computer network for stalking

**Hawaii:** Public library staff no longer exempt from act prohibiting the promotion of pornography for minors

**Illinois:** Establishes criteria for harassment through electronic communication

✓ **Iowa:** Restrictions placed on "hackers"

✓ **Maryland:** Restrictions placed on hacking and identity theft

**Michigan:** Modernization of law to include computer related crimes, such as fraud; treats attempting to commit a crime and committing a crime the same

**Minnesota:** Includes electronic communication as part of stalking and harassment

**Oklahoma:**

- HB2043: Prohibits the use of computers to threaten or harass others
- HB2349: Prohibits use of computers to make lewd proposals to children, under the age of 16
- SB1489: Provides peace officers with the authority to seize equipment used or intended to be used in relation with obscene material

**Pennsylvania:**

- HB945: Relates to identity theft
- SB262: Relates to advertisers using the Internet, especially e-mail, to market explicitly sexual material—establishes a warning must accompany such advertisements
- ✓ ● SB1077: Relates to computer viruses

**South Carolina:**

- HB3509: Relates to identity fraud
- SB470: Relates to eavesdropping with electronic equipment

**South Dakota:**

- HB1308: Prohibits possession of certain forms of computer related child pornography
- SB20: Prohibits identity theft

**Vermont:** Relates to using a computer to lure children under the age of 16; crimes involving electronic communication are considered committed where originated or received; Prohibits using computer to harass

✓ **Virginia:** Includes electronic images as obscene and establishes penalties for harassment

✓ **West Virginia:** Establishes criminal penalties for the introduction of a virus

IOWA

Text: [SF02240](#)Text: [SF02242](#)Text: [SF02200 - SF02299](#)Text: [SF Index](#)Bills and Amendments: [General Index](#)Bill History: [General Index](#)[Get Version To Print](#)

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## Senate File 2241

### Partial Bill History

- Bill Introduced: [S.J. 342](#)
- Committee Report Issued: [S.J. 354](#) [H.J. 764](#)
- Passed House: [H.J. 1548](#) [H.J. 1844](#)
- Passed Senate: [S.J. 507](#) [S.J. 1385](#)
- Signed by Governor: [S.J. 1456](#)
- [Complete Bill History](#)

### Bill Text

PAG LIN

1 1

SENATE FILE 2241

1 2

1 3

AN ACT

1 4

RELATING TO PENALTIES AND REGULATIONS CONCERNING CERTAIN

1 5

CRIMINAL OFFENSES AND LIQUOR LICENSES AND PERMITS.

1 6

1 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 8

1 9

Section 1. Section [123.3](#), Code 1999, is amended by adding

1 10

the following new subsection:

1 11

NEW SUBSECTION. 12A. "Designated security employee" means

1 12

an agent or employee of a licensee or permittee who is

1 13

primarily employed for security purposes at a commercial

1 14

establishment licensed or permitted under this chapter.

1 15

Sec. 2. Section [123.31](#), Code 1999, is amended by adding

1 16

the following new subsection:

1 17

NEW SUBSECTION. 6A. A statement, if required by the local

1 18

authority indicating whether all designated security employees

1 19

have received training and certification as provided in

1 20

section [123.32](#).

1 21

Sec. 3. Section [123.32](#), Code 1999, is amended by adding

1 22

the following new subsection:

1 23

NEW SUBSECTION. 3A. A local authority, as a condition of

1 24

obtaining a license or permit for on-premises consumption, may

1 25

require a designated security employee as defined in section

1 26

[123.3](#), to be trained and certified in security methods. The

1 27

training shall include but is not limited to mediation

1 28

techniques, civil rights or unfair practices awareness as

1 29

provided in section [216.7](#), and providing instruction on the

1 30

proper physical restraint methods used against a person who

1 31

has become combative.

1 32

Sec. 4. Section [124.401](#), subsection 5, unnumbered

1 33 paragraph 1, Code Supplement 1999, is amended to read as  
1 34 follows:

1 35 It is unlawful for any person knowingly or intentionally to  
2 1 possess a controlled substance unless such substance was  
2 2 obtained directly from, or pursuant to, a valid prescription  
2 3 or order of a practitioner while acting in the course of the  
2 4 practitioner's professional practice, or except as otherwise  
2 5 authorized by this chapter. Any person who violates this  
2 6 subsection is guilty of a serious misdemeanor for a first  
2 7 offense. A person who commits a violation of this subsection  
2 8 and who has previously been convicted of violating this  
2 9 ~~subsection~~ chapter or chapter 124A, 124B, or 453B is guilty of  
2 10 an aggravated misdemeanor. A person who commits a violation  
2 11 of this subsection and has previously been convicted two or  
2 12 more times of violating this ~~subsection~~ chapter or chapter  
2 13 124A, 124B, or 453B is guilty of a class "D" felony.

2 14 Sec. 5. NEW SECTION. 622.51A COMPUTER PRINTOUTS.

2 15 For purposes of chapters 714 and 716, computer printouts  
2 16 shall be admitted as evidence of any computer software,  
2 17 program, or data contained in or taken from a computer,  
2 18 notwithstanding an applicable rule of evidence to the  
2 19 contrary.

2 20 Sec. 6. NEW SECTION. 702.1A COMPUTER TERMINOLOGY.

2 21 For purposes of section 714.1, subsection 7A, and section  
2 22 716.6B:

2 23 1. "Computer" means an electronic device which performs  
2 24 logical, arithmetical, and memory functions by manipulation of  
2 25 electronic or magnetic impulses, and includes all input,  
2 26 output, processing, storage, computer software, and  
2 27 communication facilities which are connected or related to the  
2 28 computer in a computer system or computer network.

2 29 2. "Computer access" means to instruct, communicate with,  
2 30 store data in, or retrieve data from a computer, computer  
2 31 system, or computer network.

2 32 3. "Computer data" means a representation of information,  
2 33 knowledge, facts, concepts, or instructions that has been  
2 34 prepared or is being prepared in a formalized manner and has  
2 35 been processed, or is intended to be processed in a computer.  
3 1 Computer data may be in any form including, but not limited  
3 2 to, printouts, magnetic storage media, punched cards, and as  
3 3 stored in the memory of a computer.

3 4 4. "Computer network" means a set of related, remotely  
3 5 connected devices and communication facilities including two  
3 6 or more computers with capability to transmit data among them  
3 7 through communication facilities.

3 8 5. "Computer program" means an ordered set of instructions  
3 9 or statements that, when executed by a computer, causes the  
3 10 computer to process data.

3 11 6. "Computer services" means the use of a computer,  
3 12 computer system, or computer network and includes, but is not  
3 13 limited to, computer time, data processing, and storage  
3 14 functions.

3 15 7. "Computer software" means a set of computer programs,  
3 16 procedures, or associated documentation used in the operation  
3 17 of a computer.

3 18 8. "Computer system" means related, connected or  
3 19 unconnected, computers or peripheral equipment.

3 20 9. "Loss of property" means the greatest of the following:

3 21 a. The retail value of the property involved.

3 22 b. The reasonable replacement or repair cost, whichever is  
3 23 less.

3 24 10. "Loss of services" means the reasonable value of the  
3 25 damage created by the unavailability or lack of utility of the  
3 26 property or services involved until repair or replacement can

3 27 be effected.

3 28 Sec. 7. Section 702.14, Code 1999, is amended to read as  
3 29 follows:

3 30 702.14 PROPERTY.

3 31 "Property" is anything of value, whether publicly or  
3 32 privately owned, including but not limited to computers and  
3 33 computer data, computer software, and computer programs. The  
3 34 term includes both tangible and intangible property, labor,  
3 35 and services. The term includes all that is included in the  
4 1 terms "real property" and "personal property".

4 2 Sec. 8. NEW SECTION. 702.20A VIDEO RENTAL PROPERTY.

4 3 "Video rental property" means an audiovisual recording,  
4 4 including a videotape, videodisc, or other tangible medium of  
4 5 expression on which an audiovisual work is recorded or  
4 6 otherwise stored, or any equipment or supplies used to view  
4 7 the recording, and which is held out for rental to the public  
4 8 in the ordinary course of business.

4 9 Sec. 9. Section 714.1, Code 1999, is amended by adding the  
4 10 following new subsections:

4 11 NEW SUBSECTION. 7A. Knowingly and without authorization  
4 12 accesses or causes to be accessed a computer, computer system,  
4 13 or computer network, or any part thereof, for the purpose of  
4 14 obtaining computer services, information, or property or  
4 15 knowingly and without authorization and with the intent to  
4 16 permanently deprive the owner of possession, takes, transfers,  
4 17 conceals, or retains possession of a computer, computer  
4 18 system, or computer network or any computer software or  
4 19 computer program, or computer data contained in a computer,  
4 20 computer system, or computer network.

4 21 NEW SUBSECTION. 7B. a. Obtains the temporary use of  
4 22 video rental property with the intent to deprive the owner of  
4 23 the use and possession of the video rental property without  
4 24 the consent of the owner.

4 25 b. Lawfully obtains the temporary use of video rental  
4 26 property and fails to return the video rental property by the  
4 27 agreed time with the intent to deprive the owner of the use  
4 28 and possession of the video rental property without the  
4 29 consent of the owner. The aggregate value of the video rental  
4 30 property involved shall be the original retail value of the  
4 31 video rental property.

4 32 Sec. 10. NEW SECTION. 714.6A VIDEO RENTAL PROPERTY THEFT  
4 33 - EVIDENCE OF INTENTION - AFFIRMATIVE DEFENSE.

4 34 1. The fact that a person obtains possession of video  
4 35 rental property by means of deception, including but not  
5 1 limited to furnishing a false name, address, or other  
5 2 identification to the owner, is evidence that possession was  
5 3 obtained with intent to knowingly deprive the owner of the use  
5 4 and possession of the video rental property.

5 5 2. The fact that a person, having lawfully obtained  
5 6 possession of video rental property, fails to pay the owner  
5 7 the fair market value of the video rental property or to  
5 8 return or make arrangements acceptable to the owner to return  
5 9 the video rental property to the owner, within forty-eight  
5 10 hours after receipt of written notice and demand from the  
5 11 owner is evidence of an intent to knowingly deprive the owner  
5 12 of the use and possession of the video rental property.

5 13 3. It shall be an affirmative defense to a prosecution  
5 14 under section 714.1, subsection 7B, paragraph "a", if the  
5 15 defendant in possession of video rental property pays the  
5 16 owner the fair market value of the video rental property or  
5 17 returns the property to the owner within forty-eight hours of  
5 18 arrest, together with any standard overdue charges for the  
5 19 period that the owner was unlawfully deprived of possession,  
5 20 but not to exceed one hundred twenty days, and the value of

5 21 the damage to the property, if any.

5 22 Sec. 11. NEW SECTION. 716.6B UNAUTHORIZED COMPUTER  
5 23 ACCESS.

5 24 A person who knowingly and without authorization accesses a  
5 25 computer, computer system, or computer network commits a  
5 26 simple misdemeanor.

5 27 Sec. 12. Section 722.4, Code 1999, is amended to read as  
5 28 follows:

5 29 722.4 BRIBERY OF ELECTOR OR ELECTION OFFICIALS.

5 30 1. A person who offers, promises, or gives anything of  
5 31 value or any benefit to any elector for the purpose of  
5 32 influencing the elector's vote, in any election authorized by  
5 33 law, or any elector who receives anything of value or any  
5 34 benefit knowing that it was given for such purpose, commits an  
5 35 aggravated misdemeanor.

6 1 2. A person who offers, promises, or gives anything of  
6 2 value or any benefit to any precinct election official  
6 3 authorized by law, or to any executive officer attending the  
6 4 same, conditioned on some act done or omitted to be done  
6 5 contrary to the person's official duty in relation to such  
6 6 election, commits an aggravated misdemeanor.

6 7 Sec. 13. Section 722.8, Code 1999, is amended to read as  
6 8 follows:

6 9 722.8 DURESS TO PREVENT OR PROCURE VOTING.

6 10 1. A person who unlawfully and by force, or threats of  
6 11 force, prevents or endeavors to prevent an elector from giving  
6 12 the elector's vote at any public election commits an  
6 13 aggravated misdemeanor.

6 14 2. A person who procures, or endeavors to procure, the  
6 15 vote of an elector for or against any candidate or for or  
6 16 against any issue by means of violence, threats of violence,  
6 17 or by any means of duress commits an aggravated misdemeanor.

6 18 Sec. 14. Section 901B.1, subsection 3, Code 1999, is  
6 19 amended to read as follows:

6 20 3. Each judicial district and judicial district department  
6 21 of correctional services shall implement an intermediate  
6 22 criminal sanctions program by July 1, 2001. An intermediate  
6 23 criminal sanctions program shall consist of only levels two,  
6 24 three, and sublevels one and three of level four of the  
6 25 corrections continuum and shall be operated in accordance with  
6 26 an intermediate criminal sanctions plan adopted by the chief  
6 27 judge of the judicial district and the director of the  
6 28 judicial district department of correctional services. The  
6 29 plan adopted shall be designed to reduce probation revocations  
6 30 to prison through the use of incremental, community-based  
6 31 sanctions for probation violations.

6 32 The plan shall be subject to rules adopted by the  
6 33 department of corrections. The rules shall include provisions  
6 34 for transferring individuals between levels in the continuum.

6 35 The provisions shall include a requirement that the reasons  
7 1 for the transfer be in writing and that an opportunity for the  
7 2 individual to contest the transfer be made available.

7 3 A copy of the program and plan shall be filed with the  
7 4 chief judge of the judicial district, the department of  
7 5 corrections, and the division of criminal and juvenile justice  
7 6 planning of the department of human rights by July 1, 2001.

7 7 Sec. 15. Section 907.3, subsection 2, unnumbered paragraph  
7 8 1, Code Supplement 1999, is amended to read as follows:

7 9 At the time of or after pronouncing judgment and with the  
7 10 consent of the defendant, the court may defer the sentence and  
7 11 assign the defendant to the judicial district department of  
7 12 correctional services. The court may assign the defendant to  
7 13 supervision or services under section 901B.1 at the level of  
7 14 sanctions which the district department determines to be

7 15 appropriate, ~~if an intermediate criminal sanctions plan and~~  
 7 16 ~~program has been adopted in the judicial district under~~  
 7 17 ~~section 901B.1.~~ However, the court shall not defer the  
 7 18 sentence for a violation of any of the following:  
 7 19 Sec. 16. Chapter 714C, Code 1999, is repealed.  
 7 20 Sec. 17. Chapter 716A, Code 1999 and Code Supplement 1999,  
 7 21 is repealed.  
 7 22 Sec. 18. Sections 722.6 and 722.9, Code 1999, are  
 7 23 repealed.

7 24  
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 7 31

\_\_\_\_\_  
 MARY E. KRAMER  
 President of the Senate

7 32  
 7 33  
 7 34

\_\_\_\_\_  
 BRENT STEGRIST  
 Speaker of the House

7 35 I hereby certify that this bill originated in the Senate and  
 8 1 is known as Senate File 2241, Seventy-eighth General Assembly.

8 2  
 8 3  
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 8 8  
 8 9  
 8 10

\_\_\_\_\_  
 MICHAEL E. MARSHALL  
 Secretary of the Senate

8 11 THOMAS J. VILSACK  
 8 12 Governor

Approved \_\_\_\_\_, 2000

Text: [SF02240](#)

Text: [SF02200 - SF02299](#)

Bills and Amendments: [General Index](#)

Text: [SF02242](#)

Text: [SF Index](#)

Bill History: [General Index](#)



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 jhf

Text: SF02307

Text: SF02309

Text: SF02300 - SF02399

Text: SF Index

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## Senate File 2308

### Partial Bill History

- Bill Introduced: S.J. 379
- Committee Report Issued: S.J. 385
- Passed House: H.J. 853 H.J. 1174
- Passed Senate: S.J. 496 S.J. 929
- Signed by Governor: S.J. 1313
- Complete Bill History

### Bill Text

PAG LIN

1 1

SENATE FILE 2308

1 2

1 3

AN ACT

1 4 RELATING TO DOMESTIC VIOLENCE PROTECTIVE ORDERS AND HARASSMENT

1 5 VIA ELECTRONIC COMMUNICATIONS AND MAKING PENALTIES APPLICABLE.

1 6

1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 8

1 9 Section 1. Section 236.10, Code 1999, is amended to read

1 10 as follows:

1 11 236.10 CONFIDENTIALITY OF RECORDS.1 12 1. The ~~entire file or a portion of the file~~ in a domestic1 13 ~~abuse case shall be sealed by the clerk of court when it is~~1 14 ~~complete and after the time for appeal has expired as ordered~~1 15 ~~by the court to protect the privacy interest or safety of any~~1 16 ~~person. However, the clerk shall open the file upon~~1 17 ~~application to and order of the court for good cause shown or~~1 18 ~~upon request of the child support recovery unit. Support~~1 19 ~~payment records, whether maintained by the clerk of the~~1 20 ~~district court or the department of human services, are public~~1 21 ~~records and may be released upon request. However, a payment~~1 22 ~~record shall not include address or location information.~~1 23 2. Notwithstanding subsection 1, court orders and support1 24 payment records shall remain public records, although the1 25 court may order that address and location information be1 26 redacted from the public records.1 27 Sec. 2. Section 236.19, Code Supplement 1999, is amended

1 28 to read as follows:

1 29 236.19 FOREIGN PROTECTIVE ORDERS - REGISTRATION -1 30 ENFORCEMENT.1 31 1. As used in this section, "foreign protective order"1 32 means a protective order entered in a state other than Iowa

1 33 ~~which by a court of another state, Indian tribe, or United~~  
1 34 ~~States territory that would be an order or court-approved~~  
1 35 ~~consent agreement entered under this chapter, a temporary or~~  
2 1 ~~permanent protective order or order to vacate the homestead~~  
2 2 ~~under chapter 598, or an order that establishes conditions of~~  
2 3 ~~release or is a protective order or sentencing order in a~~  
2 4 ~~criminal prosecution arising from a domestic abuse assault if~~  
2 5 ~~it had been entered in Iowa.~~

2 6 2. A certified or authenticated copy of a permanent  
2 7 foreign protective order ~~authenticated in accordance with the~~  
2 8 ~~statutes of this state~~ may be filed with the clerk of the  
2 9 district court in any county that would have venue if the  
2 10 original action was being commenced in this state or in which  
2 11 the person in whose favor the order was entered may be  
2 12 present.

2 13 a. The clerk shall file foreign protective orders that are  
2 14 not certified or authenticated, if supported by an affidavit  
2 15 of a person with personal knowledge, subject to the penalties  
2 16 for perjury. The person protected by the order may provide  
2 17 this affidavit.

2 18 b. The clerk shall provide copies of the order as required  
2 19 by section 236.5, except that notice shall not be provided to  
2 20 the respondent without the express written direction of the  
2 21 person in whose favor the order was entered.

2 22 3. a. A valid foreign protective order so filed has the  
2 23 same effect and shall be enforced in the same manner as a  
2 24 protective order issued in this state whether or not filed  
2 25 with a clerk of court or otherwise placed in a registry of  
2 26 protective orders.

2 27 b. A foreign protective order is valid if it meets all of  
2 28 the following:

2 29 (1) The order states the name of the protected individual  
2 30 and the individual against whom enforcement is sought.

2 31 (2) The order has not expired.

2 32 (3) The order was issued by a court or tribunal that had  
2 33 jurisdiction over the parties and subject matter under the law  
2 34 of the foreign jurisdiction.

2 35 (4) The order was issued in accordance with respondent's  
3 1 due process rights, either after the respondent was provided  
3 2 with reasonable notice and an opportunity to be heard before  
3 3 the court or tribunal that issued the order, or in the case of  
3 4 an ex parte order, the respondent was granted notice and  
3 5 opportunity to be heard within a reasonable time after the  
3 6 order was issued.

3 7 c. Proof that a foreign protective order failed to meet  
3 8 all of the factors listed in paragraph "b" shall be an  
3 9 affirmative defense in any action seeking enforcement of the  
3 10 order.

3 11 4. A peace officer shall treat a foreign protective order  
3 12 as a valid legal document and shall make an arrest for a  
3 13 violation of the foreign protective order in the same manner  
3 14 that a peace officer would make an arrest for a violation of a  
3 15 protective order issued within this state.

3 16 a. The fact that a foreign protective order has not been  
3 17 filed with the clerk of court or otherwise placed in a  
3 18 registry shall not be grounds to refuse to enforce the terms  
3 19 of the order unless it is apparent to the officer that the  
3 20 order is invalid on its face.

3 21 b. A peace officer acting reasonably and in good faith in  
3 22 connection with the enforcement of a foreign protective order  
3 23 shall be immune from civil and criminal liability in any  
3 24 action arising in connection with such enforcement.

3 25 5. Filing and service costs in connection with foreign  
3 26 protective orders may be waived or deferred as provided in

3 27 section 236.3.

3 28 Sec. 3. Section 708.7, subsection 1, paragraph a,  
3 29 subparagraph (1), Code 1999, is amended to read as follows:

3 30 (1) Communicates with another by telephone, telegraph, ~~or~~  
3 31 writing, or via electronic communication without legitimate  
3 32 purpose and in a manner likely to cause the other person  
3 33 annoyance or harm.

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4 10 I hereby certify that this bill originated in the Senate and  
4 11 is known as Senate File 2308, Seventy-eighth General Assembly.

4 12

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4 16

4 17 Approved \_\_\_\_\_, 2000

4 18

4 19

4 20

4 21 THOMAS J. VILSACK

4 22 Governor

\_\_\_\_\_  
MARY E. KRAMER  
President of the Senate

\_\_\_\_\_  
BRENT SIEGRIST  
Speaker of the House

\_\_\_\_\_  
MICHAEL E. MARSHALL  
Secretary of the Senate

Text: SF02307  
Text: SF02300 - SF02399  
Bills and Amendments: General Index

Text: SF02309  
Text: SF Index  
Bill History: General Index



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jhf



Unofficial Copy

2000 Regular Session  
01r0178  
CF 01r0177

By: The Speaker (Administration) and Delegates Franchot, Petzold,  
Rosenberg, Pendergrass, and Barve

Introduced and read first time: January 28, 2000  
Assigned to: Judiciary

Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: February 29, 2000

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Crimes - Computer Piracy**

3 FOR the purpose of revising provisions of law concerning computer-related crimes;  
4 providing that certain computer-related crimes resulting in losses above a  
5 certain amount constitute a felony; establishing certain penalties; defining  
6 ~~certain terms; a certain term; altering a certain definition;~~ and generally  
7 relating to computer-related crimes.

8 BY repealing and reenacting, with amendments,  
9 Article 27 - Crimes and Punishments  
10 Section 146  
11 Annotated Code of Maryland  
12 (1996 Replacement Volume and 1999 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article 27 - Crimes and Punishments**

16 146.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "ACCESS" MEANS TO INSTRUCT, COMMUNICATE WITH, STORE DATA  
19 IN, RETRIEVE, INTERCEPT DATA FROM, OR OTHERWISE USE THE RESOURCES OF A  
20 COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK.

1 (3) (I) "AGGREGATE AMOUNT" MEANS ANY DIRECT ~~OR INDIRECT~~ LOSS  
2 OF PROPERTY OR SERVICES INCURRED BY A VICTIM.

3 (II) "AGGREGATE AMOUNT" INCLUDES THE VALUE OF ANY MONEY,  
4 PROPERTY, OR SERVICE LOST, STOLEN, OR RENDERED UNRECOVERABLE BY THE  
5 OFFENSE, OR ANY ACTUAL REASONABLE EXPENDITURE INCURRED BY THE VICTIM  
6 TO VERIFY ~~THAT WHETHER~~ A COMPUTER PROGRAM, COMPUTER, COMPUTER  
7 SYSTEM, OR COMPUTER NETWORK WAS ~~NOT~~ ALTERED, ACQUIRED, DAMAGED,  
8 DELETED, DISRUPTED, OR DESTROYED BY THE ACCESS.

9 [(1)] (4) (i) "Computer" means an electronic, magnetic, optical,  
10 organic, or other data processing device or system that performs logical, arithmetic,  
11 memory, or storage functions.

12 (ii) "Computer" includes any property, data storage facility, or  
13 communications facility that is directly related to or operated in conjunction with that  
14 device or system.

15 (iii) "Computer" does not include an automated typewriter, or  
16 typesetter, or a portable calculator.

17 [(2)] (5) "Computer control language" means any ordered statements  
18 that direct a computer to perform specific functions.

19 [(3)] (6) "Computer data base" means a representation of information,  
20 knowledge, facts, concepts, or instructions that:

21 (i) Are being prepared or have been prepared in a formalized  
22 manner or are or have been produced by a computer, computer system, or computer  
23 network; and

24 (ii) Are intended for use in a computer, computer system, or  
25 computer network.

26 [(4)] (7) "Computer network" means the interconnection of 1 or more  
27 computers through:

28 (i) The use of a satellite, microwave, line, or other communication  
29 media; and

30 (ii) Terminals or a complex consisting of 2 or more interconnected  
31 computers whether or not the interconnection is continuously maintained.

32 [(5)] (8) "Computer program" means an ordered set of instructions or  
33 statements that may interact with related data that, when executed in a computer  
34 system, causes the computer to perform specified functions.

35 [(6)] (9) "Computer services" includes, but is not limited to, computer  
36 time, data processing, and storage functions.

## HOUSE BILL 278

1            [(7)]    (10)    "Computer software" means computer programs, instructions,  
2 procedures, or associated documentation that is concerned with the operation of a  
3 computer system.

4            [(8)]    (11)    "Computer system" means 1 or more connected or unconnected  
5 computers, peripheral devices, software, data, or programs.

6            [(9)]    "Access" means to instruct, communicate with, store data in, retrieve  
7 data from, or otherwise make use of equipment including, but not limited to,  
8 computers and other data processing equipment or resources connected therewith.]

9            ~~(12)    "PROPERTY" MEANS INTELLECTUAL PROPERTY, COMPUTER DATA,  
10 INSTRUCTIONS OR PROGRAMS IN EITHER MACHINE OR HUMAN READABLE FORM,  
11 FINANCIAL INSTRUMENTS OR INFORMATION, MEDICAL INFORMATION, RESTRICTED  
12 PERSONAL INFORMATION, OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM OF  
13 VALUE.~~

14            ~~(13)    "SERVICES" INCLUDES COMPUTER TIME, DATA PROCESSING,  
15 STORAGE FUNCTIONS, COMPUTER MEMORY, OR THE UNAUTHORIZED USE OF A  
16 COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK,  
17 OR COMMUNICATIONS FACILITIES CONNECTED OR RELATED TO A COMPUTER,  
18 COMPUTER SYSTEM, OR COMPUTER NETWORK.~~

19            (b)    This section does not preclude the applicability of any other provision of  
20 this Code.

21            (c)    (1)    A person may not intentionally, willfully, and without authorization  
22 access, attempt to access, cause access, or exceed the person's authorized access, to a  
23 computer, computer network, computer software, computer control language,  
24 computer system, computer services, computer data base, or any part of these  
25 systems or services.

26            (2)    A person may not intentionally, willfully, and without authorization  
27 access, attempt to access, cause access, or exceed the person's authorized access, to a  
28 computer, computer network, computer software, computer control language,  
29 computer system, computer services, computer data base, or any part of these  
30 systems or services to:

31                    (i)    Cause the malfunction or interrupt the operation of a computer,  
32 computer network, computer software, computer control language, computer system,  
33 computer services, computer data base, or any part of these systems or services; or

34                    (ii)    Alter, damage, or destroy data or a computer program stored,  
35 maintained, or produced by a computer, computer network, computer system,  
36 computer services, computer data base, or any part of these systems or services.

37            (3)    A person may not intentionally, willfully, and without authorization:

38                    (i)    Possess, identify, or attempt to identify any valid access codes;

39 or

HOUSE BILL 278

1 (ii) Distribute or publicize any valid access codes to any  
2 unauthorized person.

3 (d) (1) Any person who violates any provision of subsection (c)(1) of this  
4 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
5 \$1,000 or imprisonment not exceeding 3 years or both.

6 (2) (I) Any person who violates any provision of subsection (c)(2) or  
7 (c)(3) of this section WHERE THE AGGREGATE AMOUNT OF THE LOSS IS LESS THAN  
8 ~~\$5,000~~ \$10,000 is guilty of a misdemeanor and on conviction is subject to a fine not  
9 exceeding \$5,000 or imprisonment not exceeding 5 years or both.

10 (II) ANY PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION  
11 (C)(2) OR (C)(3) OF THIS SECTION WHERE THE AGGREGATE AMOUNT OF THE LOSS IS  
12 ~~\$5,000~~ \$10,000 OR GREATER IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT  
13 TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING ~~45~~ 10 YEARS  
14 OR BOTH.

15 (e) (1) When illegal access to a computer, computer network, computer  
16 control language, computer system, computer services, computer software, computer  
17 data base, or any part of these systems or services is committed in violation of this  
18 section pursuant to 1 scheme or continuing course of conduct, the conduct may be  
19 considered as 1 offense.

20 (2) A court of competent jurisdiction in this State may try a person who  
21 allegedly violates any provision of subsection (c) of this section in any county in this  
22 State where:

(i) The person performs the act; or

24 (ii) The accessed computer is located.

*in-state jurisdiction*

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2000.

SENATE BILL 200

Unofficial Copy  
E1

2000 Regular Session  
(01r0177)

**ENROLLED BILL**  
-- Judicial Proceedings/Judiciary --

Introduced by The President (Administration) and Senators Miller, Forehand,  
and Hogan

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2

**Crimes - Computer Piracy**

3 FOR the purpose of revising provisions of law concerning computer-related crimes;

4 providing that certain computer-related crimes resulting in losses above a

5 certain amount constitute a felony; establishing certain penalties; defining

6 ~~certain terms; a certain term; altering a certain definition;~~ and generally

7 relating to computer-related crimes.

8 BY repealing and reenacting, with amendments,

9 Article 27 - Crimes and Punishments

10 Section 146

11 Annotated Code of Maryland

12 (1996 Replacement Volume and 1999 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

14 MARYLAND, That the Laws of Maryland read as follows:

## Article 27 - Crimes and Punishments

1  
2 146.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) "ACCESS" MEANS TO INSTRUCT, COMMUNICATE WITH, STORE DATA  
5 IN, RETRIEVE, INTERCEPT DATA FROM, OR OTHERWISE USE THE RESOURCES OF A  
6 COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK.7 (3) (I) "AGGREGATE AMOUNT" MEANS ANY DIRECT ~~OR INDIRECT~~ LOSS  
8 OF PROPERTY OR SERVICES INCURRED BY A VICTIM.9 (II) "AGGREGATE AMOUNT" INCLUDES THE VALUE OF ANY MONEY,  
10 PROPERTY, OR SERVICE LOST, STOLEN, OR RENDERED UNRECOVERABLE BY THE  
11 OFFENSE, OR ANY ACTUAL REASONABLE EXPENDITURE INCURRED BY THE VICTIM  
12 TO VERIFY ~~THAT~~ WHETHER A COMPUTER PROGRAM, COMPUTER, COMPUTER  
13 SYSTEM, OR COMPUTER NETWORK WAS NOT ALTERED, ACQUIRED, DAMAGED,  
14 DELETED, DISRUPTED, OR DESTROYED BY THE ACCESS.15 [(1)] (4) (i) "Computer" means an electronic, magnetic, optical,  
16 organic, or other data processing device or system that performs logical, arithmetic,  
17 memory, or storage functions.18 (ii) "Computer" includes any property, data storage facility, or  
19 communications facility that is directly related to or operated in conjunction with that  
20 device or system.21 (iii) "Computer" does not include an automated typewriter, or  
22 typesetter, or a portable calculator.23 [(2)] (5) "Computer control language" means any ordered statements  
24 that direct a computer to perform specific functions.25 [(3)] (6) "Computer data base" means a representation of information,  
26 knowledge, facts, concepts, or instructions that:27 (i) Are being prepared or have been prepared in a formalized  
28 manner or are or have been produced by a computer, computer system, or computer  
29 network; and30 (ii) Are intended for use in a computer, computer system, or  
31 computer network.32 [(4)] (7) "Computer network" means the interconnection of 1 or more  
33 computers through:34 (i) The use of a satellite, microwave, line, or other communication  
35 media; and

1 (ii) Terminals or a complex consisting of 2 or more interconnected  
2 computers whether or not the interconnection is continuously maintained.

3 [(5)] (8) "Computer program" means an ordered set of instructions or  
4 statements that may interact with related data that, when executed in a computer  
5 system, causes the computer to perform specified functions.

6 [(6)] (9) "Computer services" includes, but is not limited to, computer  
7 time, data processing, and storage functions.

8 [(7)] (10) "Computer software" means computer programs, instructions,  
9 procedures, or associated documentation that is concerned with the operation of a  
10 computer system.

11 [(8)] (11) "Computer system" means 1 or more connected or unconnected  
12 computers, peripheral devices, software, data, or programs.

13 [(9)] "Access" means to instruct, communicate with, store data in, retrieve  
14 data from, or otherwise make use of equipment including, but not limited to,  
15 computers and other data processing equipment or resources connected therewith.]

16 (12) ~~"PROPERTY" MEANS INTELLECTUAL PROPERTY, COMPUTER DATA,  
17 INSTRUCTIONS OR PROGRAMS IN EITHER MACHINE OR HUMAN READABLE FORM,  
18 FINANCIAL INSTRUMENTS OR INFORMATION, MEDICAL INFORMATION, RESTRICTED  
19 PERSONAL INFORMATION, OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM OF  
20 VALUE.~~

21 (13) ~~"SERVICES" INCLUDES COMPUTER TIME, DATA PROCESSING,  
22 STORAGE FUNCTIONS, COMPUTER MEMORY, OR THE UNAUTHORIZED USE OF A  
23 COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK,  
24 OR COMMUNICATIONS FACILITIES CONNECTED OR RELATED TO A COMPUTER,  
25 COMPUTER SYSTEM, OR COMPUTER NETWORK.~~

26 (b) This section does not preclude the applicability of any other provision of  
27 this Code.

28 (c) (1) A person may not intentionally, willfully, and without authorization  
29 access, attempt to access, cause access, or exceed the person's authorized access, to a  
30 computer, computer network, computer software, computer control language,  
31 computer system, computer services, computer data base, or any part of these  
32 systems or services.

33 (2) A person may not intentionally, willfully, and without authorization  
34 access, attempt to access, cause access, or exceed the person's authorized access, to a  
35 computer, computer network, computer software, computer control language,  
36 computer system, computer services, computer data base, or any part of these  
37 systems or services to:

1 (i) Cause the malfunction or interrupt the operation of a computer,  
2 computer network, computer software, computer control language, computer system,  
3 computer services, computer data base, or any part of these systems or services; or

4 (ii) Alter, damage, or destroy data or a computer program stored,  
5 maintained, or produced by a computer, computer network, computer system,  
6 computer services, computer data base, or any part of these systems or services.

7 (3) A person may not intentionally, willfully, and without authorization:

8 (i) Possess, identify, or attempt to identify any valid access codes;  
9 or

10 (ii) Distribute or publicize any valid access codes to any  
11 unauthorized person.

12 (d) (1) Any person who violates any provision of subsection (c)(1) of this  
13 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
14 \$1,000 or imprisonment not exceeding 3 years or both.

15 (2) (I) Any person who violates any provision of subsection (c)(2) or  
16 (c)(3) of this section WHERE THE AGGREGATE AMOUNT OF THE LOSS IS LESS THAN  
17 ~~\$5,000~~ \$10,000 is guilty of a misdemeanor and on conviction is subject to a fine not  
18 exceeding \$5,000 or imprisonment not exceeding 5 years or both.

19 (II) ANY PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION  
20 (C)(2) OR (C)(3) OF THIS SECTION WHERE THE AGGREGATE AMOUNT OF THE LOSS IS  
21 ~~\$5,000~~ \$10,000 OR GREATER IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT  
22 TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING ~~15~~ 10 YEARS  
23 OR BOTH.

24 (e) (1) When illegal access to a computer, computer network, computer  
25 control language, computer system, computer services, computer software, computer  
26 data base, or any part of these systems or services is committed in violation of this  
27 section pursuant to 1 scheme or continuing course of conduct, the conduct may be  
28 considered as 1 offense.

29 (2) A court of competent jurisdiction in this State may try a person who  
30 allegedly violates any provision of subsection (c) of this section in any county in this  
31 State where:

32 (i) The person performs the act; or

33 (ii) The accessed computer is located.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
35 October 1, 2000.

W. Virginia

ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
Senate Bill No. 153

(SENATOR SPROUSE, *original sponsor*)

[Passed March 8, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and seven, article three-c, chapter sixty-one of the code of west Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criminal penalties for the introduction of computer contaminants; defining terms; and making certain technical revisions.

*Be it enacted by the Legislature of West Virginia:*

That sections three and seven, article three-c, chapter sixty-one of the code of west Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-3. Definitions.**

As used in this article, unless the context clearly indicates otherwise:

(a) "Access" means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use

of any computer, computer network, computer program, computer software, computer data or other computer resources.

(b) "Authorization" means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

(c) "Computer" means an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term "computer" includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(d) "Computer contaminant" means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions

commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources or damage or destroy the normal operation of the computer.

(e) "Computer data" means any representation of knowledge, facts, concepts, instruction or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software and may be in any medium, including, but not limited to, computer print-outs, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(f) "Computer network" means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(g) "Computer operations" means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A

"computer operation" for a particular computer shall also mean any function for which that computer was designed.

(h) "Computer program" means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs or otherwise influences the functioning of a computer or computer network.

(i) "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

(j) "Computer services" means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

(k) "Computer supplies" means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

(l) "Computer resources" includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) "Owner" means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) "Person" means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) "Property" includes:

(1) Real property;

(2) Computers and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(p) "Value" means having any potential to provide any direct or indirect gain or advantage to any person.

(q) "Financial instrument" includes, but is not limited to,

any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(r) "Value of property or computer services" shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

**§61-3C-7. Alteration, destruction, etc., of computer equipment.**

(a) *Misdemeanor offenses.* -- Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services up to one thousand dollars, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail not more than six months, or both.

(b) *Felony offenses.* -- Any person who knowingly, willfully and without authorization, directly or indirectly, damages or destroys or attempts to damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data by knowingly introducing, directly, or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services more than one thousand dollars is guilty of a felony and, upon conviction thereof, shall be fined not less than two hundred dollars and not more than ten thousand dollars or confined in a state correctional facility not more than ten years, or both, or, in the discretion of the court, be fined not less than two hundred nor more than one thousand dollars and confined in the county or regional jail not more than one year.

PSW

(virus)

HOUSE AMENDED  
PRIOR PRINTER'S NOS. 1309, 1481, 1553,  
1657

PRINTER'S NO. 1743

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1077 Session of 1999

INTRODUCED BY EARLL, O'PAKE, WHITE, HART, LEMMOND, TILGHMAN,  
ROBBINS, WAUGH, KASUNIC, WOZNIAK, SCHWARTZ, RHOADES, THOMPSON  
AND BOSCOLA, SEPTEMBER 7, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MARCH 14, 2000

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes; further providing for unlawful use of  
3 a computer; AND PROHIBITING CERTAIN PRACTICES BY  
4 TELEMARKETERS. <--

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 3933 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 3933. Unlawful use of computer.

10 (a) Offense defined.--A person commits [an] the offense [if  
11 he] of unlawful use of a computer if he, whether in person,  
12 electronically or through the intentional distribution of a  
13 computer virus:

14 (1) accesses, exceeds authorization to access, alters,  
15 damages or destroys any computer, computer system, computer  
16 network, computer software, computer program or data base or  
17 any part thereof, with the intent:

1 (i) to interrupt the normal functioning of an  
2 organization [or]; or

3 (ii) to devise or execute any scheme or artifice to  
4 defraud [or], deceive or control property or services by  
5 means of false or fraudulent pretenses, representations  
6 or promises;

7 (2) intentionally and without authorization accesses,  
8 alters, interferes with the operation of, damages or destroys  
9 any computer, computer system, computer network, computer  
10 software, computer program or computer data base or any part  
11 thereof; [or] <--

12 (3) intentionally or knowingly and without authorization  
13 gives or publishes a password, identifying code, personal  
14 identification number or other confidential information about

15 a computer, computer system, computer network or data  
 16 base[.]; OR <--  
 17 (4) INTENTIONALLY OR KNOWINGLY ENGAGES IN A SCHEME OR  
 18 ARTIFICE, INCLUDING, BUT NOT LIMITED TO, A DENIAL OF SERVICE  
 19 ATTACK, UPON ANY COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK,  
 20 COMPUTER SOFTWARE, COMPUTER PROGRAM, COMPUTER SERVER OR DATA  
 21 BASE OR ANY PART THEREOF THAT IS DESIGNED TO BLOCK, IMPEDE OR  
 22 DENY THE ACCESS OF INFORMATION OR INITIATION OR COMPLETION OF  
 23 ANY SALE OR TRANSACTION BY USERS OF THAT COMPUTER, COMPUTER  
 24 SYSTEM, COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER  
 25 PROGRAM, COMPUTER SERVER OR DATA BASE OR ANY PART THEREOF.  
 26 (b) Grading.--An offense under subsection (a)(1) is a felony  
 27 of the third degree. An offense under subsection (a)(2) [or <--  
 28 (3)], (3) OR (4) is a misdemeanor of the first degree. <--  
 29 (c) Definitions.--As used in this section the following  
 30 words and phrases shall have the meanings given to them in this  
 19990S1077B1743

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1 subsection:  
 2 "Access." To intercept, instruct, communicate with, store  
 3 data in, retrieve data from or otherwise make use of any  
 4 resources of a computer, computer system, computer network or  
 5 data base.  
 6 "Computer." An electronic, magnetic, optical, hydraulic,  
 7 organic or other high speed data processing device or system  
 8 which performs logic, arithmetic or memory functions and  
 9 includes all input, output, processing, storage, software or  
 10 communication facilities which are connected or related to the  
 11 device in a system or network.  
 12 "Computer network." The interconnection of two or more  
 13 computers through the usage of satellite, microwave, line or  
 14 other communication medium.  
 15 "Computer program." An ordered set of instructions or  
 16 statements and related data that, when automatically executed in  
 17 actual or modified form in a computer system, causes it to  
 18 perform specified functions.  
 19 "Computer software." A set of computer programs, procedures  
 20 and associated documentation concerned with the operation of a  
 21 computer system.  
 22 "Computer system." A set of related, connected or  
 23 unconnected computer equipment, devices and software.  
 24 "Computer virus." A computer program copied to or installed  
 25 on a computer, COMPUTER NETWORK, COMPUTER PROGRAM, COMPUTER <--  
 26 SOFTWARE OR COMPUTER SYSTEM without the informed consent of the  
 27 owner of the computer, COMPUTER NETWORK, COMPUTER PROGRAM, <--  
 28 COMPUTER SOFTWARE OR COMPUTER SYSTEM that may replicate itself  
 29 and that causes unauthorized activities within or by the  
 30 computer, COMPUTER NETWORK, COMPUTER PROGRAM, COMPUTER SOFTWARE <--  
 19990S1077B1743

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1 OR COMPUTER SYSTEM.  
 2 "Data base." A representation of information, knowledge,  
 3 facts, concepts or instructions which are being prepared or  
 4 processed or have been prepared or processed in a formalized  
 5 manner and are intended for use in a computer, computer system  
 6 or computer network, including, but not limited to, computer  
 7 printouts, magnetic storage media, punched cards or data stored  
 8 internally in the memory of the computer.  
 9 "Financial instrument." Includes, but is not limited to, any  
 10 check, draft, warrant, money order, note, certificate of  
 11 deposit, letter of credit, bill of exchange, credit or debit  
 12 card, transaction authorization mechanism, marketable security

## Virus

→ prog.

- copied or installed
- on compl network . . .
- without informed consent  
of owner
- ~~that~~ may replicate itself
- causes unauth activities  
w/in comp. . .

⇒ prog. or derivations of  
prog. cause unauth activities

13 or any computer system representation thereof.  
 14 "Property." Includes, but is not limited to, financial  
 15 instruments, computer software and programs in either machine or  
 16 human readable form, and anything of value, tangible or  
 17 intangible.  
 18 "Services." Includes, but is not limited to, computer time,  
 19 data processing and storage functions.  
 20 (d) Restitution.--Upon conviction under this section for the  
 21 intentional distribution of a computer virus, the sentence shall  
 22 include an order for the defendant to reimburse the victim for:  
 23 (1) the cost of repairing or, if necessary, replacing  
 24 the affected computer, computer system, computer network,  
 25 computer software, computer program or data base; ~~or~~ <--  
 26 (2) lost profit for the period that the computer,  
 27 computer system, computer network, computer software,  
 28 computer program or data base is not usable; OR <--  
 29 (3) THE COST OF REPLACING OR RESTORING THE DATA LOST OR  
 30 DAMAGED AS A RESULT OF A VIOLATION OF THIS SECTION.  
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1 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ: <--  
 2 § 7330. PROHIBITION OF CERTAIN PRACTICES BY TELEMARKETERS.  
 3 (A) OFFENSE DEFINED.--NO TELEMARKETER, AS DEFINED IN SECTION  
 4 2 OF THE ACT OF DECEMBER 4, 1996 (P.L.911, NO.147), KNOWN AS THE  
 5 TELEMARKETER REGISTRATION ACT, SHALL REFUSE OR OTHERWISE FAIL TO  
 6 DISCLOSE THE NAME, CITY, STATE AND TELEPHONE NUMBER OF THE  
 7 TELEMARKETER AFTER A RECIPIENT OF A TELEPHONE SOLICITATION BY  
 8 THE TELEMARKETER REQUESTS SUCH INFORMATION.  
 9 (B) PENALTY.--A PERSON WHO VIOLATES SUBSECTION (A) COMMITS A  
 10 SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY  
 11 A FINE OF \$250.  
 12 Section 2 3. This act shall take effect in 60 days. <--

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 945

Session of  
1999

INTRODUCED BY CHADWICK, ARGALL, BAKER, BARD, BELFANTI,  
BENNINGHOFF, BROWNE, BUXTON, CASORIO, CIVERA, CLARK,  
L. I. COHEN, COLAFELLA, CURRY, DEMPSEY, DERMODY, EGOLF,  
FAIRCHILD, FEESE, GANNON, GORDNER, HARHAI, HENNESSEY, HESS,  
JADLOWIEC, KAISER, KENNEY, LUCYK, MAHER, MANDERINO, MASLAND,  
McCALL, McILHINNEY, McNAUGHTON, MELIO, MICHLOVIC, MUNDY,  
NAILOR, NICKOL, PHILLIPS, RAMOS, ROBINSON, ROONEY, ROSS,  
RUBLEY, SAINATO, SANTONI, SATHER, SAYLOR, SCHRODER, SEMMEL,  
SERAFINI, SEYFERT, B. SMITH, STABACK, STEELMAN, STEIL, STERN,  
STEVENSON, E. Z. TAYLOR, THOMAS, TIGUE, TRELLO, TRICH, VANCE,  
WILLIAMS, WOGAN, GRUCELA, FARGO AND WASHINGTON,  
MARCH 22, 1999

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, MAY 8, 2000

### AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, defining the offense of identity  
3 theft.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 4120. Identity theft.

9 ~~(a) Offense defined. Except as provided in subsection (c),~~ ←  
10 ~~a person commits the offense of identity theft of another~~  
11 ~~person, a misdemeanor of the first degree, if he takes, assumes~~  
12 ~~or uses the identity or identifying information of another~~

1 ~~person without the consent of that other person and with the~~  
2 ~~intent to:~~

3 ~~(1) cause financial loss to the other person;~~

4 ~~(2) obtain goods or services; or~~

5 ~~(3) otherwise assume or use the other person's identity~~  
6 ~~for any unlawful purpose.~~

7 ~~(b) Separate offenses. Each time an offender takes, assumes~~  
8 ~~or uses the identity or identifying information of another~~  
9 ~~person without the consent of that other person constitutes a~~  
10 ~~separate offense under this section.~~

11 ~~(c) Grading. When a person commits an offense under~~  
12 ~~subsection (a) and the victim of the offense is 60 years of age~~  
13 ~~or older, the offense shall be graded as a felony of the third~~  
14 ~~degree.~~

15 ~~(d) Restitution. The court may, in addition to any other~~  
16 ~~restitution sentence or order authorized by law, sentence a~~  
17 ~~person convicted of violating this section to make restitution~~  
18 ~~for all reasonable expenses incurred by the victim or on the~~  
19 ~~victim's behalf to investigate theft of the victim's identity,~~  
20 ~~bring or defend civil or criminal actions related to theft of~~  
21 ~~the victim's identity or to take other efforts to clear the~~  
22 ~~victim's credit record of negative credit reports related to~~  
23 ~~theft of the victim's identity. Such expenses may include, but~~  
24 ~~are not limited to, attorney fees, fees and costs imposed by~~  
25 ~~credit bureaus or associated with efforts to clear the victim's~~  
26 ~~credit record, fees and costs associated with private~~  
27 ~~investigations, and court costs and filing fees.~~

28 ~~(e) Definitions. As used in this section, the following~~  
29 ~~words and phrases shall have the meanings given to them in this~~  
30 ~~subsection:~~

1 ~~"Expenses." All sums charged or billed to the victim or any~~  
2 ~~person acting on the victim's behalf or as the victim's~~  
3 ~~representative, whether or not any such charge or bill has been~~  
4 ~~paid.~~

5 ~~"Identity" or "identifying information." Any information or~~  
6 ~~facts used to establish identity, whether or not the information~~  
7 ~~or facts are in writing. Writings include, but are not limited~~  
8 ~~to, pieces of paper, notebooks, applications, receipts, birth~~  
9 ~~certificates, Social Security cards, driver's licenses,~~  
10 ~~nondriver State issued identification cards, baptismal~~  
11 ~~certificates, employee identification cards or school~~  
12 ~~identification cards and identifying information recorded by~~  
13 ~~other methods, including, but not limited to, information stored~~  
14 ~~on any computer, computer disc, computer printout, computer~~  
15 ~~system, or part thereof, or by any other mechanical or~~  
16 ~~electronic means.~~

17 Section 2. This act shall take effect immediately.

18 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF  
19 IDENTITY THEFT OF ANOTHER PERSON IF HE POSSESSES OR USES  
20 IDENTIFYING INFORMATION OF ANOTHER PERSON WITHOUT THE CONSENT OF  
21 THAT OTHER PERSON TO FURTHER ANY UNLAWFUL PURPOSE. ←

22 (B) SEPARATE OFFENSES.--EACH TIME A PERSON POSSESSES OR USES  
23 IDENTIFYING INFORMATION IN VIOLATION OF SUBSECTION (A)  
24 CONSTITUTES A SEPARATE OFFENSE UNDER THIS SECTION.

25 (C) GRADING.--THE OFFENSES SHALL BE GRADED AS FOLLOWS:

26 (1) A FIRST OFFENSE UNDER THIS SECTION IS A MISDEMEANOR  
27 OF THE FIRST DEGREE, AND A SECOND AND OR SUBSEQUENT OFFENSE  
28 UNDER THIS SECTION IS A FELONY OF THE THIRD DEGREE. ←

29 (2) WHEN A PERSON COMMITS AN OFFENSE UNDER SUBSECTION  
30 (A) AND THE VICTIM OF THE OFFENSE IS 60 YEARS OF AGE OR

1 OLDER, THE GRADING OF THE OFFENSE SHALL BE ONE GRADE HIGHER  
2 THAN SPECIFIED IN PARAGRAPH (1).

3 (D) CONCURRENT JURISDICTION TO PROSECUTE.--IN ADDITION TO  
4 THE AUTHORITY CONFERRED UPON THE ATTORNEY GENERAL BY THE ACT OF  
5 OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH  
6 ATTORNEYS ACT, THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO  
7 INVESTIGATE AND TO INSTITUTE CRIMINAL PROCEEDINGS FOR ANY  
8 VIOLATION OF THIS SECTION OR ANY SERIES OF SUCH VIOLATIONS  
9 INVOLVING MORE THAN ONE COUNTY OF THIS COMMONWEALTH OR ANOTHER  
10 STATE. NO PERSON CHARGED WITH A VIOLATION OF THIS SECTION BY THE  
11 ATTORNEY GENERAL SHALL HAVE STANDING TO CHALLENGE THE AUTHORITY  
12 OF THE ATTORNEY GENERAL TO INVESTIGATE OR PROSECUTE THE CASE.  
13 AND, IF ANY SUCH CHALLENGE IS MADE, THE CHALLENGE SHALL BE  
14 DISMISSED AND NO RELIEF SHALL BE MADE AVAILABLE IN THE COURTS OF  
15 THIS COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

16 (E) USE OF POLICE REPORTS.--A REPORT TO A LAW ENFORCEMENT  
17 AGENCY BY A PERSON STATING THAT THE PERSON'S IDENTIFYING  
18 INFORMATION HAS BEEN LOST OR STOLEN OR THAT THE PERSON'S  
19 IDENTIFYING INFORMATION HAS BEEN USED WITHOUT THE PERSON'S  
20 CONSENT SHALL BE PRIMA FACIE EVIDENCE THAT THE IDENTIFYING  
21 INFORMATION WAS POSSESSED OR USED WITHOUT THE PERSON'S CONSENT.

22 (F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
23 WORDS AND PHRASES SHALL HAVE THE MEANING GIVEN TO THEM IN THIS  
24 SUBSECTION:

25 "DOCUMENT." ANY WRITING, INCLUDING, BUT NOT LIMITED TO,  
26 BIRTH CERTIFICATE, SOCIAL SECURITY CARD, DRIVER'S LICENSE,  
27 NONDRIVER GOVERNMENT-ISSUED IDENTIFICATION CARD, BAPTISMAL  
28 CERTIFICATE, ACCESS DEVICE CARD, EMPLOYEE IDENTIFICATION CARD,  
29 SCHOOL IDENTIFICATION CARD OR OTHER IDENTIFYING INFORMATION  
30 RECORDED BY ANY OTHER METHOD, INCLUDING, BUT NOT LIMITED TO,

1 INFORMATION STORED ON ANY COMPUTER, COMPUTER DISC, COMPUTER  
2 PRINTOUT, COMPUTER SYSTEM, OR PART THEREOF, OR BY ANY OTHER  
3 MECHANICAL OR ELECTRONIC MEANS.  
4 "IDENTIFYING INFORMATION." ANY DOCUMENT, PHOTOGRAPHIC,  
5 PICTORIAL OR COMPUTER IMAGE OF ANOTHER PERSON, OR ANY FACT USED  
6 TO ESTABLISH IDENTITY, INCLUDING, BUT NOT LIMITED TO, A NAME,  
7 BIRTH DATE, SOCIAL SECURITY NUMBER, DRIVER'S LICENSE NUMBER,  
8 NONDRIVER GOVERNMENTAL IDENTIFICATION NUMBER, TELEPHONE NUMBER, ←  
9 CHECKING ACCOUNT NUMBER, SAVINGS ACCOUNT NUMBER, STUDENT  
10 IDENTIFICATION NUMBER OR EMPLOYEE OR PAYROLL NUMBER.  
11 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

HOUSE AMENDED  
PRIOR PRINTER'S NOS. 264, 1243, 1745,  
1913

PRINTER'S NO. 1945

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 262 Session of 1999

INTRODUCED BY HART, BELL, SALVATORE, WENGER, MOWERY, WHITE,  
WAUGH, TOMLINSON, SLOCUM, THOMPSON, DENT, GERLACH, ROBBINS,  
CORMAN, RHOADES, MUSTO, KASUNIC, COSTA AND BOSCOLA,  
FEBRUARY 1, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MAY 10, 2000

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for ~~obscene and~~ <--  
3 ~~other sexual materials and performances.~~ EXPLICIT SEXUAL <--  
4 MATERIALS.

5 The General Assembly finds and declares as follows:  
6 (1) The Internet is an increasingly valuable medium for  
7 communication and the dissemination and collection of  
8 information.  
9 (2) The children of this Commonwealth utilize the  
10 Internet for entertainment, education and commerce.  
11 (3) Many children in this Commonwealth have access to  
12 electronic mail accounts through their parents' accounts,  
13 shared accounts or their own personal accounts.  
14 (4) Increasingly advertisers use the Internet to market  
15 ~~obscene~~ EXPLICIT SEXUAL materials to millions of users of the <--  
16 Internet.

1 (5) One of the frequently used vehicles for the  
2 marketing of ~~obscene~~ EXPLICIT SEXUAL materials via the <--  
3 Internet is unsolicited electronic mail messages.  
4 (6) These unsolicited ~~obscene~~ EXPLICIT SEXUAL <--  
5 advertisements are sent to computers in Commonwealth  
6 households allowing children to view or have access to  
7 pornographic materials.  
8 (7) Although there are an increasing number of Internet  
9 filtering software titles that parents can use to block  
10 access to obscene World Wide Web sites, these filtering  
11 software titles are ineffective against ~~obscene~~ EXPLICIT <--  
12 SEXUAL material that is sent via electronic mail.  
13 (8) There is no universal method of identifying

*Penn*

14 electronic mail messages that market ~~obscene~~ EXPLICIT SEXUAL <--  
 15 materials.  
 16 (9) Despite the best efforts of parents to protect their  
 17 children from ~~obscene~~ EXPLICIT SEXUAL material via electronic <--  
 18 mail messages, they are unable to do so because there is no  
 19 method by which they can separate and filter out  
 20 inappropriate messages from appropriate messages.  
 21 (10) The Commonwealth has a compelling interest in  
 22 protecting children from ~~obscenity~~ EXPLICIT SEXUAL MATERIAL. <--  
 23 (11) In doing so, government must enact a narrowly  
 24 tailored remedy to avoid interfering with the growth or  
 25 accessibility of this important medium and with the rights of  
 26 adult users of the Internet under the first amendment to the  
 27 Constitution of the United States and section 7 of Article I  
 28 of the Constitution of Pennsylvania.  
 29 (12) This act empowers parents to decide what type of  
 30 messages are inappropriate for their children and effectively  
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1 block those messages from their children's electronic mail  
 2 accounts.  
 3 (13) This act does not restrict or prevent the ~~senders~~ <--  
 4 SENDING of unsolicited ~~obscene electronic mail messages from~~ <--  
 5 ~~sending those messages~~ EXPLICIT SEXUAL ELECTRONIC <--  
 6 ADVERTISEMENTS to any and all prospective recipients AS LONG <--  
 7 AS AN APPROPRIATE WARNING ACCOMPANIES SUCH ADVERTISEMENTS.  
 8 The General Assembly of the Commonwealth of Pennsylvania  
 9 hereby enacts as follows:  
 10 Section 1. Section 5903(a) ~~and (b)~~, (B) AND (H) (1) of Title <--  
 11 18 of the Pennsylvania Consolidated Statutes are amended and the  
 12 section is amended by adding subsections to read:  
 13 § 5903. Obscene and other sexual materials and performances.  
 14 (a) Offenses defined.--No person, knowing the obscene  
 15 character of the materials or performances involved, shall:  
 16 (1) display or cause or permit the display of any  
 17 explicit sexual materials as defined in subsection (c) in or  
 18 on any window, showcase, newsstand, display rack, billboard,  
 19 display board, viewing screen, motion picture screen, marquee  
 20 or similar place in such manner that the display is visible  
 21 from any public street, highway, sidewalk, transportation  
 22 facility or other public thoroughfare, or in any business or  
 23 commercial establishment where minors, as a part of the  
 24 general public or otherwise, are or will probably be exposed  
 25 to view all or any part of such materials;  
 26 (2) sell, lend, distribute, TRANSMIT, exhibit, give away <--  
 27 or show any obscene materials to any person 18 years of age  
 28 or older or offer to sell, lend, distribute, TRANSMIT, <--  
 29 exhibit or give away or show, or have in his possession with  
 30 intent to sell, lend, distribute, TRANSMIT, exhibit or give <--  
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1 away or show any obscene materials to any person 18 years of  
 2 age or older, or knowingly advertise any obscene materials in  
 3 any manner;  
 4 (3) design, copy, draw, photograph, print, utter,  
 5 publish or in any manner manufacture or prepare any obscene  
 6 materials;  
 7 (4) write, print, publish, utter or cause to be written,  
 8 printed, published or uttered any advertisement or notice of  
 9 any kind giving information, directly or indirectly, stating  
 10 or purporting to state where, how, from whom, or by what  
 11 means any obscene materials can be purchased, obtained or

12 had;

13 (5) produce, present or direct any obscene performance

14 or participate in a portion thereof that is obscene or that

15 contributes to its obscenity;

16 (6) hire, employ, use or permit any minor child to do or

17 assist in doing any act or thing mentioned in this

18 subsection;

19 (7) knowingly take or deliver in any manner any obscene

20 material into a State correctional institution, county

21 prison, regional prison facility or any other type of

22 correctional facility;

23 (8) possess any obscene material while such person is an

24 inmate of any State correctional institution, county prison,

25 regional prison facility or any other type of correctional

26 facility; ~~or~~ <--

27 (9) knowingly permit any obscene material to enter any

28 State correctional institution, county prison, regional

29 prison facility or any other type of correctional facility if

30 such person is a prison guard or other employee of any

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1 correctional facility described in this paragraph~~;~~ ~~or~~ <--

2 ~~(10) transmit or cause to be transmitted via an~~

3 ~~electronic communication system to one or more persons within~~

4 ~~this Commonwealth an unsolicited advertisement that contains~~

5 ~~obscene material or performances or a uniform resource~~

6 ~~locator to a World Wide Web site that contains obscene~~

7 ~~material or performances without including in the electronic~~

8 ~~communication the term "ADV-ADULT" at the beginning of the~~

9 ~~subject line of the electronic communication.~~

10 (A.1) DISSEMINATION OF EXPLICIT SEXUAL MATERIAL VIA AN <--

11 ELECTRONIC COMMUNICATION.--NO PERSON, KNOWING THE CONTENT OF THE

12 ADVERTISEMENT TO BE EXPLICIT SEXUAL MATERIALS, AS DEFINED IN

13 SUBSECTION (C) (1) AND (C) (2), SHALL TRANSMIT OR CAUSE TO BE

14 TRANSMITTED AN UNSOLICITED ADVERTISEMENT IN AN ELECTRONIC

15 COMMUNICATION AS DEFINED IN SECTION 5702 (RELATING TO

16 DEFINITIONS) TO ONE OR MORE PERSONS WITHIN THIS COMMONWEALTH

17 THAT CONTAINS EXPLICIT SEXUAL MATERIALS AS DEFINED IN

18 SUBSECTIONS (C) (1) AND (C) (2) WITHOUT INCLUDING IN THE

19 ADVERTISEMENT THE TERM "ADV-ADULT" AT THE BEGINNING OF THE

20 SUBJECT LINE OF THE ADVERTISEMENT.

21 (b) Definitions.--As used in this section the following

22 words and phrases shall have the meanings given to them in this

23 subsection:

24 "Community." For the purpose of applying the "contemporary

25 community standards" in this section, community means the State.

26 "Knowing." As used in [subsection (a)] SUBSECTIONS (A) AND <--

27 (A.1), knowing means having general knowledge of, or reason to

28 know or a belief or ground for belief which warrants further

29 inspection or inquiry of, the character and content of any

30 material or performance described therein which is reasonably

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1 susceptible of examination by the defendant.

2 "Material." Any literature, including any book, magazine,

3 pamphlet, newspaper, storypaper, bumper sticker, comic book or

4 writing; any figure, visual representation, or image, including

5 any drawing, photograph, picture, videotape or motion picture.

6 "Nude." Means showing the human male or female genitals,

7 pubic area or buttocks with less than a fully opaque covering,

8 or showing the female breast with less than a fully opaque

9 covering of any portion thereof below the top of the nipple.

10 "Obscene." Any material or performance, if:  
 11 (1) the average person applying contemporary community  
 12 standards would find that the subject matter taken as a whole  
 13 appeals to the prurient interest;  
 14 (2) the subject matter depicts or describes in a  
 15 patently offensive way, sexual conduct of a type described in  
 16 this section; and  
 17 (3) the subject matter, taken as a whole, lacks serious  
 18 literary, artistic, political, educational or scientific  
 19 value.  
 20 "Performance." Means any play, dance or other live  
 21 exhibition performed before an audience.  
 22 "Sadomasochistic abuse." Means, in a sexual context,  
 23 flagellation or torture by or upon a person who is nude or clad  
 24 in undergarments, a mask or in a bizarre costume or the  
 25 condition of being fettered, bound or otherwise physically  
 26 restrained on the part of one who is nude or so clothed.  
 27 "Sexual conduct." Patently offensive representations or  
 28 descriptions of ultimate sexual acts, normal or perverted,  
 29 actual or simulated, including sexual intercourse, anal or oral  
 30 sodomy and sexual bestiality; and patently offensive  
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1 representations or descriptions of masturbation, excretory  
 2 functions, sadomasochistic abuse and lewd exhibition of the  
 3 genitals.  
 4 "Subject line." The area of an electronic communication that  
 5 contains a summary description of the content of the message.  
 6 "Transportation facility." Any conveyance, premises or place  
 7 used for or in connection with public passenger transportation,  
 8 whether by air, rail, motor vehicle or any other method,  
 9 including aircraft, watercraft, railroad cars, buses, and air,  
 10 boat, railroad and bus terminals and stations.  
 11 "Uniform resource locator." An Internet address for a <--  
 12 resource, object or information that is accessible via the  
 13 Internet.  
 14 "World Wide Web site." A web page or collection of web pages  
 15 that is organized around a central theme or purpose. Each web  
 16 page is a single computer file that may contain text, images and  
 17 other multimedia materials to present information that can be  
 18 viewed via the World Wide Web.  
 19 \* \* \*  
 20 (H) CRIMINAL PROSECUTION.-- <--  
 21 (1) ANY PERSON WHO VIOLATES SUBSECTION (A), (A.1) OR (F)  
 22 IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE. VIOLATION OF  
 23 SUBSECTION (A) IS A FELONY OF THE THIRD DEGREE IF THE  
 24 OFFENDER HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF  
 25 SUBSECTION (A) OR IF THE MATERIAL WAS SOLD, DISTRIBUTED,  
 26 PREPARED OR PUBLISHED FOR THE PURPOSE OF RESALE.  
 27 \* \* \*  
 28 (1) Penalty for attempt to evade prosecution.--Any person  
 29 who violates subsection (a)(10) (A.1) and attempts to avoid <--  
 30 prosecution by knowingly including false or misleading  
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1 information in the return address portion of the electronic mail <--  
2 message COMMUNICATIONS such that the recipient would be unable <--  
3 to send a reply message to the original, authentic sender shall,  
4 in addition to any other penalty imposed, upon conviction, be  
5 sentenced to pay a fine of not less than \$100 nor more than \$500  
6 per message or to imprisonment for not more than 90 days, or  
7 both, for a first offense and a fine of not less than \$500 nor  
8 more than \$1,000 or to imprisonment for not more than one year,  
9 or both, for a second OR SUBSEQUENT offense. <--  
10 (m) Concurrent jurisdiction to prosecute.--The Attorney  
11 General shall have the concurrent prosecutorial jurisdiction  
12 with the district attorney for cases arising under subsection  
13 ~~(a)(10)~~ (A.1) and may refer to the district attorney, with the <--  
14 district attorney's consent, any violation or alleged violation  
15 of subsection ~~(a)(10)~~ (A.1) which may come to the Attorney <--  
16 General's attention.  
17 Section 2. This act shall take effect in 60 days.

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